UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1992/4/Add.2
6 March 1992

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE
First session
Vienna, 21-30 April 1992
Item 4 of the draft provisional agenda*

STRENGTHENING EXISTING INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE, INCLUDING TECHNICAL COOPERATION IN DEVELOPING COUNTRIES, WITH SPECIAL EMPHASIS ON COMBATING ORGANIZED CRIME

Note by the Secretary-General

Addendum

Conclusions and recommendations of the International Seminar on Organized Crime, Suzdal, 21-25 October 1990

1. The General Assembly, in its resolution 45/123, having recalled its resolution 44/71 and Economic and Social Council resolution 1989/70, took note, inter alia, of resolution 15, entitled "Organized crime", adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders; 1/ requested the Committee on Crime Prevention and Control to consider ways of strengthening international cooperation in combating organized crime and to submit its views through the Council to the General Assembly at its forty-seventh session; and called upon Member States, international organizations and interested non-governmental organizations to cooperate with the United Nations in organizing the International Seminar on Organized Crime.

2. With financial support provided by the Department of Technical Co-operation for Development of the United Nations Secretariat, the International Seminar on Organized Crime was held at Suzdal in October 1991 at the invitation of the Ministry of the Interior of the Union of Soviet Socialist Republics and with the collaboration of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations. The conclusions and recommendations of the Seminar are contained in the annex to the present document.

3. In accordance with resolution 45/123, paragraph 3, the attention of the Commission is called to the opinions expressed and the decisions taken by the Eighth Congress on this matter 2/ and to the fact that, in pursuance of General

*E/CN.15/1992/1.

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Assembly resolution 46/140, annex II, entitled "Rationalization of the work of the Third Committee, including the biennial programme of work of the Committee for 1992-1993", the consideration of the question of international cooperation in combating organized crime has become part of the biennial programme of the Third Committee of the General Assembly, starting with the forty-seventh session of the Assembly.

Notes

1/ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.

2/ Ibid., chap. IV, sect. C; and ibid., chap. I. sect C, resolution 15.

Annex

PRACTICAL MEASURES AGAINST ORGANIZED CRIME

Conclusions and recommendations of the International Seminar on Organized Crime, Suzdal, 21-25 October 1991

1. The International Seminar on Organized Crime, which was attended by leading law enforcement officials and experts from 15 countries, from the United Nations Secretariat, from the Helsinki Institute on Crime Prevention and Control, affiliated with the United Nations, from the International Criminal Police Organization (ICPO/Interpol) and from the Office of International Criminal Justice of the University of Illinois at Chicago, formulated the following practical measures against organized crime, which are based on a distillation of their considerable experience in its prevention and control. The applicability of these measures depends on particular legal and judicial systems, on the availability of resources, and on the specific manifestations of organized crime.

I. PROFILE OF ORGANIZED CRIMINAL GROUPS

2. The evolution of organized crime and the forms it takes vary from country to country, although there are common features. The formation of criminal associations is influenced by various social, economic and legal factors. It is, however, possible to single out two basic ways in which organized crime evolves in the majority of countries. These are: involvement in illegal activities (such as property offences, money laundering, drug trafficking, currency violations, intimidation, prostitution, gambling and trafficking in arms and antiquities) and participation in the legal economic sphere (directly or through parasitic means such as extortion). Such participation always tends to use illegal competitive means and can be of greater economic impact than the involvement in entirely illegal activities. In both cases criminal methods are used because the backbone of organized criminal formations is composed of criminal elements.

3. No uniform definition of organized crime has yet been developed. In essence, however, it is usually understood as being a relatively large group of continuous and controlled criminal entities that carry out crimes for profit and seek to create a system of protection against social control by illegal means such as violence, intimidation, corruption and large scale theft. A more general description would be "any group of individuals organized for the purpose of profiting by illegal means on a continuing basis".

4. Organized crime can be divided into many types. One such type is the traditional or the Mafia-style family, where structured hierarchies, internal rules, discipline, codes of behaviour and diversity in illegal activities are common practice. Included in such organizations are the largest and most developed types of criminal groups, involved in a multiplicity of illegal activities. Another type is the professional. Members of such organizations join together for a certain criminal venture. Such organizations are fluid and not as rigidly structured as those of the traditional type. They are exemplified by entities involved in counterfeiting, car theft, armed robbery, extortion and so forth. The composition of a professional criminal organization may be constantly changing and its members may be involved in a variety

of similar criminal enterprises. In addition, there are many organized groups that dominate particular territories, and others that are involved in particular types of crime.

5. There are also organized crime groups divided on the basis of ethnic, cultural and historical ties. These ties link them to their countries of origin, thus forming a major network extending beyond national borders. Exploiting the features of their origins, such as language and customs, they are able to insulate themselves from the actions of law enforcement agencies. Many organized crime groups have significant ethnic or national components and are often commonly referred to by ethnic or national labels. Because of their prevalence and the lack of a practical alternative, these labels are used in the present document, even though such terminology involves oversimplification, risks stereotyping and can be offensive to the vast majority of law-abiding members of that ethnic group or nationality.

6. Identification of these types of organized criminal groups does not necessarily imply rigid borderlines between them. Nearly every organized criminal entity may involve a multiplicity of component features. New forms involving different elements frequently arise. Some countries, for example, have seen the emergence of urban street formations, including juvenile gangs. Organized crime is, indeed, very adaptable; it is often characterized by rapid adaptation of the forms of its activities to the national criminal justice policy and to the protective mechanisms of States. Its leaders are often individuals of great intelligence and extreme cruelty, and are true professionals in crime, making them a particular threat to society.

7. Organized crime produces social, political and economic evils. Amongst the social evils are the adverse effects of illegal drugs on the behaviour and health of individuals, the growth of violence involving firearms, the fear of crime, manipulation and control of bodies such as labour unions and the increased cost of purchasing goods and services. For example, in one highly developed country, the largest organized crime group has controlled four of that nation's labour unions.

8. The political effects can include infiltration into and influence over political parties and the apparatus of government, including local administrations, and corruption of politicians and State officials. This often leads to a loss of public confidence in the Government and the political process and a breakdown of consensus within society. Many countries report that members of their police forces and armed forces have been corrupted by drug traffickers. Also, assassinations of government officials, judges, mayors and law enforcement officials in certain countries have alarmed public opinion throughout the world.

9. It is not possible to identify accurately or even to estimate all the economic consequences of organized crime. It infiltrates legitimate business, tainting all those with whom it comes into contact, as well as corrupting officials whose services are required to launder illicit profits. In some countries, the profits of organized crime can be compared to those of entire branches of industry; for example, the trade in illegal drugs has been estimated to be the second largest industry in the world, by value of goods. The income of organized crime groups equals the gross national product of many countries.

10. The ability of organized crime to generate a vast supply of capital, to infiltrate legitimate business and to ruin rivals by means of control over prices represents a serious threat to the very future of any society. Legitimate commerce can be undermined by the shadow economy, with all the political and social dangers following that process. The large illicit sums infiltrating the world economy affect a country's balance of payments, the monetary system, bank cooperation, the profitability of private firms and the prices of consumer goods and services.

11. The cooperation between the largest organized criminal entities and the growing internationalization of organized crime may create a system with such economic strength that it poses a threat that many countries would not be able to counteract on their own.

II. SUBSTANTIVE LEGISLATION

12. In practically all countries, those engaged in the illegal activities of organized criminal entities are subject to criminal liability in accordance with various laws which establish certain offences, or within the framework of common law in particular categories of crimes. Long experience in organized crime control has led many countries to adopt specific statutes designed to restrict the possibilities for organized crime to flourish. These statutes are both preventive and repressive. Evidence-gathering presents considerable difficulties and there are limits to the application of sanctions and measures against the illegal activities of those involved. Legislation should be kept under review in order to ensure that it is responsive to changing circumstances.

13. It is very important that penal statutes should provide a means of establishing the criminal liability of both the actual perpetrators of a crime and the leaders of criminal entities (who are usually not directly involved in a specific crime). Unless criminal liability of the leadership or membership of criminal entities is established, it will only be possible to prosecute the lower rank of criminals, and not those who control them.

14. The danger and scope of organized crime are considerable. In some countries it may be considered advisable to enact legislation that has a direct impact on the crimes committed by members of organized crime enterprises. Such legislation would be directed not against any specific criminal act but against all serious crimes committed in a concerted manner by a group of individuals acting together for a common purpose. It may also be considered advisable to enact legislation prohibiting membership in a criminal association. It is advisable to specify in such legislation the elements of the offences committed by organized criminals and the factors that aggravate their seriousness.

15. To counteract effectively the laundering of proceeds of crime it is important that all countries adopt norms for banking and financial institutions and establish criminal liability in order to enable them to comply with the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. a/ Other instruments not limited to drug trafficking, such as regional conventions and model regulations, may also be of value.

16. One approach is to create an obligation to report to competent bodies every financial transaction in excess of an amount stipulated by the legislation, or an obligation to report every suspicious transaction. The establishment of criminal liability in case of failure to abide by such obligations will be of great assistance in combating money laundering. A proper inquiry into particularly suspicious transactions can be initiated on the basis of reports received, and reports can be used by investigators seeking to piece together how a criminal organization handles its flow of money. The reports also can serve the important function of corroborating the testimony of cooperating witnesses and they may bring to the attention of investigators a geographical region that has suddenly shown an increase in sizeable financial transactions (indicating that the area may have become the object of organized crime activities), or a bank where there have been suspicious developments in financial transactions. Appropriate international mechanisms should be developed for the exchange of such information.

17. The success of efforts to combat the laundering of "black money" directly depends on how accessible the activities of financial bodies are to the law enforcement agencies. The problem here is that opening up the activities of the financial bodies of any country to outside scrutiny can affect their competitive position. The activities of organized crime can, however, undermine a whole society. Furthermore, the money derived from organized crime often circulates through the same channels as money concealed from the taxation authorities. In view of this, it is vital for the banks to maintain records of the identity of their clients, and to cooperate with law enforcement agencies whenever there are suspicious deposits or other transactions. It may be necessary to strengthen mechanisms of control over banking operations and even to centralize information of this kind. Governments should encourage banks to take as much responsibility as possible for the controls on criminality.

18. At present, money laundering is considered as a crime in some countries only. This gives international organized crime the chance to benefit by using the banking and other services of countries that lack such legislation. All countries should therefore include in their criminal codes a crime of "money laundering", in accordance with the provisions of article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. a/ Consideration should be given to ensuring that such legislation embraces all proceeds of organized crime.

19. Corruption greatly facilitates the activities of organized criminal groups. In view of this, many countries have enacted special anti-corruption legislation. The fight against organized crime would be greatly assisted if all countries were to follow the anti-corruption recommendations adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and make appropriate use of the manual on practical measures against corruption (A/CONF.144/8) approved at that Congress. b/ It is important that countries take steps to prevent organized crime groups from corrupting individuals and organizations in the economic and financial sectors, particularly in such areas as State contracts and trade services.

20. A crime committed by an organized group may be considered an aggravated one. The criminal codes of many countries define the commission of a crime by an organized group as a qualifying feature.

21. In addition to the traditional sanctions of incarceration or fines that may be imposed upon conviction, consideration should be given to other sanctions designed to deter organized criminality. Some countries use judicially imposed limitations on property, residence, association and daily activities of persons formally adjudged to be criminally dangerous, often taking past convictions into account. The granting of licences and public contracts may be conditional on the absence of criminal connections and proof of good reputation. Individuals and legal entities engaged in economic or financial activities involving great risk to the public, for example deposit-taking institutions or those that deal with toxic waste, should be subject to sufficiently severe and sufficiently enforced regulation to prevent wrongdoing, in particular since penal punishments rarely provide proper compensation for victims. Particular attention must be paid to the deterrence and punishment of misconduct by legal entities, such as multinational and other corporations. Individual executives may frequently be beyond national jurisdiction and personal responsibility may be difficult to establish. Criminal punishment of the entity itself, by fine or by forfeiture of property or legal rights, is used in some jurisdictions against corporate misconduct.

22. Crimes committed for economic gain can be successfully countered by the forfeiture of such gains and of any other assets of the individuals and organization involved. In some legal systems, great significance is attributed to the freezing, seizure and confiscation of assets related to illegal activity. The need for more effective organized crime control makes it necessary to regard forfeiture as a strategic weapon, an economic method of discouraging organized crime activities and the means of eliminating the financial advantages of such antisocial activities.

23. The procedures for freezing, seizure and confiscation should be broad in their scope and permit the confiscation of a wide range of assets of an offender. The State should be able to eliminate all gain to offenders from their criminal activity. A subsidiary benefit of such action is that law enforcement agencies may be allowed to use confiscated assets or funds to further the activities of the agency. This can be a powerful incentive. International agreements may provide for the sharing of such assets.

24. In dealing with organized crime, it is appropriate to have the following types of assets subject to confiscation: (a) any property constituting the proceeds of organized criminal actions and any assets obtained with the help of these proceeds; and (b) any property used or intended to be used, in any manner or part, to commit or facilitate the commission of a crime by an organized group, including land, buildings and other private property.

25. Consideration may be given to allowing certain evidentiary rules to be used in the procedures for confiscation of the assets of criminals involved in organized crime. For example, if it is proved that defendants had acquired assets during the time they were committing offences for which they had been convicted, and there is no other likely method by which they could have acquired the assets, then it may be reasonably inferred that the assets are the proceeds of crime. In the drafting of legislation related to such confiscation, whether preventive or repressive, the liberty and property rights of individuals must be protected in accordance with national constitutional principles.

III. PROCEDURAL LEGISLATION

26. In many countries criminal procedures oblige the court, prosecutor, investigator and police, as appropriate, to carry out investigations within their power whenever there are indications that a crime has been committed. There may, however, be discretionary powers that allow the law enforcement agencies to choose not to investigate a crime or to initiate a prosecution. Where this discretion exists it is often used by investigators when working with informants from criminal circles. Its use requires a high degree of professional responsibility on the part of investigators. Legal systems should be encouraged to recognize the possibility, in some cases, of granting minor criminals immunity from prosecution for their acts, for the purpose of disclosing the leaders of organized criminal groups.

27. The criminal laws of many countries specify the elements that must be established to prove that an offence has been committed. These may include: the act of committing a crime; the defendant's guilt and motives for the crime; any aggravating or extenuating circumstances, including the defendant's record, and the nature and amount of damage inflicted by crime. Evaluation of the evidence is carried out by the official performing the investigation, the prosecutor, and finally by the court. In practice, there is no difference in the standard of evidence required in respect of crimes committed by organized crime groups against other crimes.

28. Deciding on the verdict must remain a task for the authority exercising judicial powers over serious offences committed by organized crime. In doing so, the principle of the presumption of innocence must be followed.

29. The experience of many countries suggests that it may be advantageous to use information obtained with the help of electronic surveillance, undercover agents, controlled delivery of drugs, the testimony of accomplices and other methods of preliminary investigation as evidence. The acceptability of such methods of preliminary investigation should be limited by strict observance of legal requirements and criminal procedural principles.

30. The use of the testimony of accomplices can be extremely helpful in prosecutions involving organized crime. Careful assessment and use of such testimony can enable the law enforcement process to penetrate the layers of secrecy that are characteristic of criminal organizations and would otherwise protect them from prosecution. Some countries also find it advantageous to enact legislation obliging witnesses to testify truthfully and providing for sanctions if they refuse to do so.

31. The restriction of the liberty of the defendant prior to conviction is frequently allowed by law when there are specified grounds. The main form of such restriction of liberty prior to conviction is pre-trial detention. This can be ordered if it is appropriate in view of the seriousness of the case and the possible sentence upon conviction and for other reasons such as the possibility that the defendant will seek to evade justice or has tried to escape the possibility of concealment of evidence, or the possibility that the defendant will commit further offences or otherwise be a danger to the community.

32. It may be appropriate to have conditional release provisions, so that a defendant who has been accused of an offence could be released upon the payment of a certain sum of money unless the judicial authorities believe that pre-trial detention is necessary. The question whether a criminal may be released

on bail should normally be a matter for a judicial or other competent body but the financial resources of an organized criminal often make release inexpedient. The appropriateness of granting conditional release and other benefits in cases of organized criminality must be evaluated with regard to the criminal record of the accused and the gravity of the accusation.

33. Provisions for the protection of witnesses are of great importance in combating organized crime. It is therefore recommended that national systems of criminal justice pay close attention to provisions, programmes and any legislation aimed at providing for the security of a witness. In particular, they should consider adopting measures for the protection of witnesses that allow for the relocation and change of identity of those witnesses, along with their physical protection if a threat is posed by a defendant and the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and their families) to establish a new identity, with temporary housing, providing for the transportation of household furniture and other personal belongings to a new location, subsistence payments, assisting them in obtaining employment, and providing other necessary services to help the witnesses to lead a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account. In addition, provision should be made for the safe custody of incarcerated witnesses, including separate accommodation. Legislation may also be necessary to deal with the practical problems that can arise in connection with relocated witnesses, such as child custody disputes and crimes committed in the witnesses' new identities.

IV. LAW ENFORCEMENT METHODS

34. If effective action is to be taken against organized crime, the law enforcement authorities need to be able to predict and detect organized crime activity. This requires the systematic collection and analysis of all relevant information from all sources in order to make it possible to produce and use intelligence for both strategic and tactical purposes. The methods employed for the collection and utilization of such information may be authorized and controlled by legislation. Even so, it is important that the technical facilities and techniques that the law enforcement authorities are allowed to use should always be sophisticated enough to enable them to match those employed by organized crime.

35. The production of intelligence requires the collection, collation and analysis of a wide range of information on the persons and organizations suspected of being involved in organized criminal activity, often including information that at first sight is not directly related to organized crime. There may be no rigid borderline between strategic and tactical intelligence but the main aim of tactical intelligence is to help in the planning of particular police operations and to identify the sources for obtaining the evidence that makes it possible to arrest a suspect and to prove guilt. Trained intelligence analysis greatly increases the effective application of law enforcement intelligence. It is important to note that there is often a need to continue the collection of information at all appropriate stages of the legal process. Intelligence should always be collected in such a manner that, even years later, it can be retrieved and used as evidence.

36. Where resources permit, computerized information systems may be of particular benefit in combating organized crime. Computers should be used to store

information both on the persons and organizations suspected of being involved in organized criminal activity and on the crimes committed or being planned. Where there are different law enforcement agencies collecting information on organized crime, arrangements need to be made to allow an exchange of information, for example between local and national (or federal) authorities, and between local police forces in different areas. Careful attention must be paid to the compatibility of computerized systems, and the convertibility of manual systems to computerized systems. Creation of a centralized data bank may be appropriate in some countries. This information can be shared internationally on the basis of agreements. Technical assistance in criminal intelligence systems may be of mutual benefit to developing and developed countries.

37. Particular attention should be paid to information from confidential police sources, including prisoners. Further important intelligence will come from other sources, however, including open sources and international liaison. In particular, financial and taxation bodies, when permitted to do so, may be of great assistance in organized crime control, as they frequently find themselves directly in contact with organized groups when these groups seek to use the proceeds of criminal activity. Legislative inquiries and official and public records may also be of value. An essential resource in the effective investigation of organized crime is the capability to collect complicated financial and commercial information and present it in an intelligible manner as evidence. Information concerning forfeitable assets should also be collected, so that such property can be forfeited and made available for police use.

38. The infiltration of organized crime into legal enterprises and any contacts it may make in political circles can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigation of their activities. Therefore, law enforcement agencies, when collecting various data on the criminal activity of a particular person or organization, should try to obtain the most comprehensive intelligence picture possible. The law enforcement agencies should adopt a range of measures, which may include the following:

(a) Developing intelligence, through informants, searches and other techniques, to uncover large-scale organized criminal enterprises;

(b) Determining the factors and conditions that facilitate the development of organized criminal activity;

(c) Providing for centralized collection, storage and analysis of information (including use of criminal organization charts) and for the tactical application of such information;

(d) Ensuring cooperation with law enforcement authorities and other bodies involved, using a multi-agency approach;

(e) Studying other countries' experience of organized crime control;

(f) Developing, on the basis of the above factors, an integral criminal policy of legislation, allocation of resources and mobilization of public support.

39. To lift the veil of secrecy, conspiracy and fear-induced silence of possible witnesses, as well as to understand how the criminal communities

funcion, who directs their activity, where their illegal income is channelled etc., it is recommended that law enforcement bodies of all countries collect intelligence and evidence of criminal activities by undercover means. With the right safeguards, secret operations directed against organized crime can be conducted effectively through the use of undercover agents and informants, often in conjunction with the use of technical facilities to intercept and to record conversations the contents of which may facilitate the disclosure of crimes. These techniques may include wire-taps, surveillance by means of closed-circuit systems, night vision equipment etc., as well as video and audio recording of ongoing events. In some jurisdictions, such technical surveillance may be used only if other mechanisms of investigation have failed or there is no reason to think that they will lead to the desired results, or if other mechanisms are deemed to be too dangerous.

40. If extreme care is exercised with regard to the reliability of their testimony, and due account is taken of the gravity of their offence, the cooperating witnesses for the prosecution may be a valuable means of infiltrating organized crime groups. Mitigation of sentence or even dismissal of charges, where possible, can motivate lesser criminals to assist in investigations of organized crime. Incorporation of such procedures into national legislation or recognized practice, together with the protective services previously discussed, may serve to attract such cooperating witnesses.

V. ORGANIZATIONAL STRUCTURES

41. Organized crime may be investigated by a variety of law enforcement agencies with different jurisdictions. In this connection, it is advisable to ensure that close coordination is maintained between central and peripheral structures and that law enforcement authorities also ensure effective liaison between intelligence and operations. In countries with federal structures, it is essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other governmental units. Close coordination within and between agencies and units is essential to successful action against organized crime. A clear delineation of jurisdiction among agencies and units can contribute to a harmonious and effective working relationship.

42. When resources permit, it may be very useful to set up one or more specialized units dedicated to the investigation of organized crime, particularly in the areas of corruption, money laundering and illegal drug trafficking. There is a danger, which must be recognized, that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards against this must be developed.

43. Within any individual law enforcement agency, a strictly centralized senior management system that can scrutinize all aspects of investigations and monitor their course is necessary to ensure that all investigations are conducted in accordance with national laws and with proper respect for human rights. It is important for senior management officials to take due account of the necessity of ensuring financial, logistical and moral support.

44. Investigators, and in particular those leading the investigation, should be selected on the basis of their ability, experience, moral qualities and

dedication. The importance of basic and in-service training should not be underestimated, for prosecutors and judges as well as for policemen.

45. The relationships between investigative, prosecutorial and judicial functions vary markedly between different legal systems. To combat organized crime successfully, in any system, it is necessary for these three functions to be harmoniously coordinated. Even so, due respect must be accorded to maintaining the proper relationships between the functions.

VI. INTERNATIONAL COOPERATION

46. International experience shows that organized crime has long ago crossed national borders and is today transnational. The following crimes, in particular, are found most frequently in international dealings: drug trafficking, contraband, counterfeiting of currency, traffic in stolen motor vehicles, money laundering and traffic in minors and arms. It should be noted that aspects of the evolutionary process undergone by society may make powerful criminal organizations even more impenetrable and facilitate the expansion of their illegal activities. Therefore, international cooperation between the law enforcement agencies of all countries is vital for effective organized crime control. Law enforcement operations should pay due respect to the sovereignty of all nations. Such cooperation should be developed on a sound legal basis, created at national, bilateral and multilateral levels. While an international jurisdiction is a remote but possible goal, the easiest mechanism is often bilateral inter-State agreements. Although multilateral agreements require extensive negotiation, they can be of great use, as is the case with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. a/

47. In addition to cooperation in legal matters, effective international action against organized crime can be promoted through bilateral and multilateral cooperation in training, technical assistance and research, and through the exchange of information, in particular for the benefit of developing countries. The United Nations crime and criminal justice programme provides an appropriate framework for these activities. Effective cooperation is also facilitated by making proper use of the valuable facilities and services provided by the International Criminal Police Organization (ICPO/Interpol), and by various regional and subregional arrangements.

48. Since criminal organizations are very mobile and inventive in their use of the slightest deficiencies in national laws, all States should consider making provision to ensure that their judicial and law enforcement agencies respond adequately to requests for legal assistance from other countries. The main forms of cooperation so far established at the national level include exchange of information on organized crime in general and cooperation in specific operational matters; extradition; the transfer of a witness from one country to another; mutual legal assistance to seize and confiscate the proceeds of illegal activities and other assets; and the provision of training and assistance to other police forces, especially for combating illegal drug trafficking.

VII. EVALUATION

49. In order to determine the appropriate level of the law enforcement response, mechanisms to evaluate the gravity of the threat posed by organized crime are needed. The current state of knowledge demonstrates considerable lack of precision in this regard. Some countries have attempted to quantify the financial harm caused by organized crime but these have remained only estimates. More extensive and rigorous research in this area may be of value to legislators and governmental administrators, who have to make appropriate decisions on the allocation of resources to combat organized crime.

50. The prevention and control of organized crime should not remain a matter for the law enforcement authorities alone. It requires broad cooperation with other authorities, the business community, civic organizations and the community as a whole. Mobilization of the public to participate in this work requires educational measures and the responsible cooperation of the mass media to reveal the harm caused by organized crime and its dangers to individuals and to society, and to stimulate public participation in the struggle to defeat it.

Notes

a/ United Nations publication, Sales No. E.91.XI.6.

b/ See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C, resolution 7.

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1992/4/Add.3
5 March 1992

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE
First session
Vienna, 21-30 April 1992
Item 4 of the provisional agenda*

STRENGTHENING EXISTING INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE, INCLUDING TECHNICAL COOPERATION IN DEVELOPING COUNTRIES, WITH SPECIAL EMPHASIS ON COMBATING ORGANIZED CRIME

Note by the Secretary-General

Addendum

Conclusions and recommendations of the International Expert Group Meeting for the Elaboration of a Model Treaty on the Transfer of Enforcement of Penal Sanctions, Siracusa, 3-8 December 1991

1. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 28, 1/ invited Member States to take further steps to improve the methods of international cooperation in criminal matters by considering the conclusion of agreements for the transfer of enforcement of penal sanctions. The Secretary-General was called upon to provide or facilitate the provision of professional advice and technical support at the request of Member States that are interested in concluding such agreement and to encourage international collaboration in research with a view to the transfer of enforcement of penal sanctions. Finally, the Congress requested the Committee on Crime Prevention and Control to consider this question and the possibility of the formulation of a model agreement thereon, with a view to submitting it to the Ninth Congress for further deliberation.

2. The General Assembly, in its resolution 45/121, inter alia, welcomed this resolution of the Congress.

3. In accordance with this mandate, the draft model treaty contained in annex I was elaborated by an international expert group meeting on the elaboration of a model treaty on the transfer of enforcement of penal sanctions, organized by the International Institute of Higher Studies in

*E/CN.15/1992/1.

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Criminal Sciences and the International Association of Penal Law, in cooperation with the United Nations Secretariat, and held at Siracusa from 3 to 8 December 1991. The list of participants in the Meeting is set out in annex II.

4. The Expert Group expressed its conviction that the model treaty, when finalized, would provide a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements to improve cooperation in matters of crime prevention and criminal justice. The importance of such a model treaty as an effective way of dealing with transnational crime was recognized as a useful complement to the work already accomplished in related areas, namely the model treaties on extradition, mutual assistance in criminal matters, transfer of proceedings in criminal matters and transfer of supervision of offenders conditionally sentenced or conditionally released (see General Assembly resolutions 45/116, 45/117, 45/118 and 45/119), as well as the Model Agreement on the Transfer of Foreign Prisoners. 2/

Notes

1/ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990 (United Nations publication, Sales No. E.191.IV.2), chap. I, sect. C.

2/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.

Annex I

DRAFT MODEL TREATY ON THE TRANSFER OF ENFORCEMENT OF PENAL SANCTIONS

Preamble

The _____ and the _____

Desiring to improve ways and means of international cooperation in criminal matters,

Believing that such cooperation should further the ends of justice and the social settlement of offenders,

Considering that the transfer of enforcement of penal sanctions may contribute to greater effectiveness in the fight against crime,

Convinced, therefore, that the transfer of enforcement of penal sanctions should be encouraged,

Have agreed as follows:

ARTICLE 1

Scope of application

This Treaty applies to the following sanctions: a/

(a) Deprivations of liberty;
(b) Fines;
(c) Confiscations;
(d) Disqualifications.

ARTICLE 2

Definitions

For the purposes of this Treaty:

(a) "Deprivation of liberty" means any custodial punishment or measure imposed by a court in respect of a criminal offence;

(b) "Fine" means a punishment imposed by a court in respect of a criminal offence consisting in an obligation to pay a sum of money to the State; b/

(c) "Confiscation" means any punishment or measure imposed by a court in relation to a criminal offence resulting in the final deprivation of property;

(d) "Disqualification" means any loss or suspension of a right or any prohibition or loss of legal capacity imposed by a court in relation to a criminal offence; c/

(e) "Sentencing State" means the State in which the sanction in respect of which transfer of enforcement has been or may be requested was imposed;

(f) "Administering State" means the State to which enforcement of the sanction has been or may be transferred.

ARTICLE 3

Principles

1. Each State Party shall, in accordance with the provisions of this Treaty, have jurisdiction to enforce a sanction imposed in the other State Party. This jurisdiction may be exercised only following a request by the sentencing State.

2. Enforcement of the sanction requested in accordance with the provisions of this Treaty may not be refused, subject to the provisions of articles 5 and 6.

ARTICLE 4

Dual criminality

The transfer of the enforcement of a sanction shall be subject to the condition that the act or omission in relation to which the sanction was imposed would constitute an offence under the law of the administering State if committed in its territory.

ARTICLE 5

Mandatory grounds for refusal

The enforcement shall be refused:

(a) If the decision by which the sanction was imposed in the requesting State is not final and enforceable;

(b) If there are grounds for believing that the proceedings in the requesting State did not comply with the generally recognized principles on the protection of human rights; d/

(c) If there are grounds for believing that the sanction was brought about or aggravated by considerations of race, religion, nationality, ethnic origin, sex, status or political opinion;

(d) If, under the law of either state Party, the person has become immune from enforcement for any reason, including lapse of time;

(e) If there has been a final decision rendered against the person in the requested State in respect of the offence concerned or where the enforcement of the sentence would otherwise be contrary to its law on the prohibition of double jeopardy;

(f) If the sanction consists in a fine and the person concerned has no income or realizable property in the requested State;

(g) If the sanction is a confiscation and the law of the requested State does not allow such confiscation for the offence in question or the ordering of such confiscation in view of the remote relationship between the offence and the property concerned;

(h) If the sanction consists in a confiscation and the property to be confiscated or any other realizable property, including sources of income, is not available in the requested State;

(i) If the sanction is a disqualification and the law of the requested State does not allow such disqualification for the offence in question.

ARTICLE 6

Optional grounds for refusal

The enforcement may be refused:

(a) If the competent authorities of the requested State are instituting or have decided not to institute or to terminate proceedings in respect of the offence to which the request for the transfer of enforcement relates;

(b) If the offence in relation to which the sanction was imposed is a purely military offence, a fiscal offence, e/ or a political offence; f/

(c) If the offence was committed outside the territory of the requested State;

(d) If the requested State considers that, in the circumstances of the case, the enforcement of the sanction would be incompatible with international humanitarian considerations in view of the age, health or other personal circumstances of the person concerned;

(e) If the sanction consists in deprivation of liberty and the sentenced person is not a national of the requested State nor ordinarily resident in the requested State;

(f) If the sanction consists in a disqualification and the person concerned does not exercise the activities to which the disqualification applies primarily in the requested State.

ARTICLE 7

Reasons for refusal

Reasons shall be given for any refusal to comply with a request for transfer of enforcement.

ARTICLE 8

Communications

1. Requests for the transfer of enforcement shall be made in writing.

2. Requests, the supporting documents and any subsequent communications shall be transmitted through diplomatic channels, directly between the ministries of justice or any other authorities designated by the States Parties.

ARTICLE 9

Required documents

1. A request for the transfer of enforcement shall contain or be accompanied by the following information:

(a) Identification of the authority presenting the request;

(b) A duly certified copy of any decision whereby the sanction was imposed and a certificate that the decision is final and enforceable;

(c) A description of the act or omission that gave rise to the sanction of which transfer of enforcement is being requested, including indication of its time and place, if not already sufficiently contained in the decision itself mentioned under subparagraph (b) above;

(d) The provisions of the legislation of the sentencing State on the basis of which the act or omission is considered to be an offence;

(e) A description of the sanction of which transfer of enforcement is being requested;

(f) An indication of any part of such sanction that has already been enforced, of any period of provisional detention served and of any other matters of relevance for the enforcement of the sanction;

(g) A reasonably exact statement on the identity, nationality and residence of the person concerned;

(h) In case of requests for enforcement of confiscation, any information on the property that would be subject to such enforcement.

2. If the administering State considers that the information supplied by the sentencing State is not adequate to enable it to apply this Treaty, it shall ask for the necessary additional information. It may prescribe a date for the receipt of such information. g/

ARTICLE 10

Language

Requests for the transfer of enforcement and supporting documents shall be accompanied by a translation into the language of the administering State or into any other language acceptable to that State.

ARTICLE 11

Certification and authentication

Requests for transfer of enforcement and the supporting documents, as well as any documents presented in response to such a request, shall not require certification or authentication unless otherwise provided by this Treaty. h/

ARTICLE 12

Decision on the request

The competent authorities of the administering State shall consider what action to take on the request for transfer of enforcement, in order to comply with it in accordance with the law of that State. The administering State shall promptly communicate its decision on the request to the sentencing State. i/

ARTICLE 13

Provisional measures

Upon receiving a request for the transfer of enforcement, the administering State shall apply such provisional measures, including provisional detention and seizure, as would be applied under its law in similar circumstances if the offence in question had been committed in its own territory. j/

ARTICLE 14

Effects of the transfer for the sentencing State

1. The sentencing State may not proceed with the enforcement of a sanction consisting in the deprivation of liberty or a fine once the administering State has accepted the transfer. k/

2. The right to enforce a sanction shall revert to the sentencing State once the administering State informs it that it has revoked its acceptance or that it is not in a position to enforce the sanction or to enforce it fully.

ARTICLE 15

Effects of the transfer for the administering State

1. The competent authorities of the administering State shall:

(a) Continue the enforcement of the sanction immediately or through a court or administrative order, under the conditions set out in article 16; or

(b) Convert, through a judicial or administrative procedure, the sanction imposed in the sentencing State into a sanction prescribed by the law of the administering State for the offence in question, under the conditions set out in article 17.

2. The administering State, if requested, shall inform the sentencing State which of these procedures it intends to follow.

3. The administering State shall be bound by the findings as to the facts in so far as they appear explicitly or implicitly in the decision rendered in the sentencing State.

4. The person concerned may not be tried again in the administering State for the act or omission that gave rise to the sanction the enforcement of which has been transferred to it.

ARTICLE 16

Continued enforcement

1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration or amount of the sanction as determined by the sentencing State.

2. If, however, this sanction is by its nature, duration or amount incompatible with the law of the administering State, this State may adapt the sanction to the one prescribed by its own law for the offence in question. When adapting the sanction, the administering State shall ensure that the nature of the sanction corresponds, as far as possible, to that of the sanction imposed by the sentencing State. It shall not aggravate, by its nature, duration or amount, the sanction imposed in the sentencing State, or exceed the maximum prescribed by the law of the administering State.

ARTICLE 17

Conversion of the sanction

In case of conversion of the sanction, the administering State, while taking into due consideration the sanction imposed in the sentencing State, shall be entitled to substitute for the sanction imposed by that State a sanction of a different nature, duration or amount, subject to the following conditions:

(a) A sanction consisting in the deprivation of liberty of a period of more than six months shall not be converted into a fine;

(b) The conversion shall in no case aggravate the penal position of the person concerned. In particular, the administering State shall not be bound by any minimum which its laws may provide for the offence in question.

ARTICLE 18

Law governing the enforcement

1. The enforcement of the sanction shall be governed by the law of the administering State and that State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto.

2. Any part of the sanction enforced in whatever manner in the sentencing State shall be deducted in full for the purposes of enforcement in the administering State.

ARTICLE 19

Information on enforcement

The administering State shall inform the sanctioning State:

(a) When it considers enforcement of the sanction to have been completed;

(b) When circumstances render it impossible to enforce the sanction partially or totally, in particular when the person concerned has escaped from custody.

ARTICLE 20

Fines and confiscations

1. For the purpose of enforcement of a fine or confiscation consisting in the obligation to pay a sum of money, the administering State shall convert the amount of the sanction imposed in the sentencing State into its currency at the rate of exchange ruling at the time when the decision on enforcement is taken.

2. Where a fine or confiscation consisting in the obligation to pay a sum of money cannot be enforced either totally or in part, an alternative custodial sanction can be applied by the competent authorities of the administering State if the laws of both States so provide in such cases, unless the sentencing State clearly excluded it.

3. The proceeds of fines and confiscations shall accrue to the public funds of the administering State, without prejudice to the rights of third parties. 1/

4. Property confiscated which is of special interest may be remitted to the sentencing State if it so requests.

ARTICLE 21

Review, pardon and amnesty

1. The sentencing State alone shall have the right to decide on any application for review of the decision.

2. Either Party shall be competent to grant pardon and amnesty or commute the sanction in accordance with its law.

3. The sanctioning State shall without delay inform the administering State of any decision or procedural measure adopted by it that causes the right of enforcement to lapse in accordance with the proceeding paragraphs.

4. The administering State shall terminate enforcement of the sanction as soon as it is informed by the sentencing State of any decision or measure as a result of which the sanction ceases to be enforceable.

ARTICLE 22

Costs

Unless the States Parties decide otherwise, the costs that may arise from the application of this Treaty shall not be refunded.

ARTICLE 23

Final provisions

1. This Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. This Treaty shall enter into force on the thirtieth day after the day on which instruments of ratification are exchanged.

3. This Treaty shall apply to requests made after the date of its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which the notification is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

_____ _____

Done at _____ on _____

in the _____ and _____

languages, [both texts] [all texts] being equally authentic.

Notes

a/ The Model Treaty is based on the assumption that it applies to sanctions imposed on natural persons. If negotiating States wish to extend its application to fines, confiscations and disqualifications imposed on legal persons, some specific provisions may have to be elaborated.

b/ Negotiating States may wish to include in the definition of "fines" the imposition of pecuniary sanctions by an administrative authority for regulatory or administrative offences, provided the person concerned has had the opportunity to bring the matter before a court through procedures meeting the necessary requirements of due process.

c/ Negotiating States may wish to include in the definition of "disqualifications" the disqualifications imposed by an administrative authority in relation to a criminal offence or regulatory or administrative offences, subject to the same conditions as those set out in the previous footnote.

Negotiating States may wish to structure the cooperation in the enforcement of disqualifications as a system of information by the sentencing State to the other State, leaving it to the discretion of the latter State to take any disqualifying measure of a similar or even of a different nature under its own law in respect of the person concerned.

d/ The grounds of refusal contemplated in this subparagraph may cover to some extent cases of refusal to enforce sanctions imposed by decisions rendered in absentia, in particular where the person concerned may be held to have been deprived of minimum rights of conducting the defence. Negotiating States may also wish to adopt a specific ground of refusal in that regard, specifying at the same time the cases where the enforcement of the sanctions thus imposed may be acceptable, for example:

"1. A decision is not considered to have been rendered in absentia if:

"(a) It has been confirmed or pronounced after opposition by the person concerned; or

"(b) It has been rendered on appeal, provided that the appeal was lodged by the person concerned.

"2. When considering if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person tried in absentia has deliberately sought to evade justice or the fact that the person, having had the possibility of lodging a legal remedy against the decision made in absentia, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected neither to do so nor to ask for adjournment."

e/ Negotiating States may wish to specify that fiscal offences may cover offences in relation to taxes, customs, duties, exchange and excise; in addition, they may wish to specify that fiscal offences do not include specific types of offences, such as money laundering, trafficking in cultural property, smuggling, trafficking in arms and explosives, and any other offence which constitutes an infringement of export-import laws and regulations, other than those arising essentially out of non-payment of duties and tariffs.

f/ Some countries may wish to use the following addition: "Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, nor any other offence agreed by the Parties not to be an offence of a political character for the purposes of extradition."

g/ In cases where a sanction was imposed for two or more offences, and some of these would not fulfil the requirement of double criminality or would constitute a military, fiscal or political offence, the requested State may

wish to use this paragraph to find out which part of the sanction relates to offences for which it may be obliged to comply with the request for transfer.

h/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

i/ It is likely that the procedure for the decision on the request would involve the intervention of the court, ex officio or by way of an individual recourse, in order to assess whether some or all the conditions to apply the Treaty are met, including conditions referring to fundamental principles of the national law for the protection of individual rights (for example protection against the use of unlawful means to procure the presence of the person in the territory of the administering State).

j/ Negotiating States may wish to include the possibility of provisional measures in cases where the requested State announces its intention to request enforcement of a sanction consisting in deprivation of liberty or confiscation prior to the submission of a formal request for enforcement. They may also envisage the possibility of complying with requests for seizure of property with a view to eventual confiscation, even before a final confiscation order has been issued in the requesting State. In those cases, special provisions would have to be envisaged pertaining to the necessary documentation.

k/ This paragraph does not apply to sanctions of confiscation and disqualification, since their enforcement in the administering State should not prevent their enforcement in the sentencing State. The States Parties should ascertain that the enforcement of a confiscation sanction would not result in the deprivation of more property or property of a higher value than specified in the decision imposing the sanction.

l/ Negotiating States may wish to agree on a different system of disposition, such as sharing the proceeds.

Annex II

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UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1992/4/Add.3/Corr.1
27 March 1992

ENGLISH ONLY

COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE
First session
Vienna, 21-30 April 1992
Item 4 of the provisional agenda*

STRENGTHENING EXISTING INTERNATIONAL COOPERATION IN CRIME PREVENTION AND CRIMINAL JUSTICE, INCLUDING TECHNICAL COOPERATION IN DEVELOPING COUNTRIES, WITH SPECIAL EMPHASIS ON COMBATING ORGANIZED CRIME

Note by the Secretary-General

Addendum

Conclusions and recommendations of the International Expert Group Meeting for the Elaboration of a Model Treaty on the Transfer of Enforcement of Penal Sanctions, Siracusa, 3-8 December 1991

Corrigendum

Page 13

After the seventh entry insert

Gioacchino Polimeni, Director, Penal Affairs, Ministry of Justice, Italy

*E/CN.15/1992/1 and Corr.1.

V.92-52739 8207T